27. Dr. Riley required Petitioner to turn in an additional "early pass" when she left school early without prior authorization.[1] Pet. pp. 13-14.

28. Respondents can discern no complaint in the paragraph numbered "28" in Petitioner's Brief. Pet. p. 14.

29. Petitioner alleges she "was told" that Ms. Deloach, a white teacher, came down hard on Dr. Riley about her class profile.[2] Pet. p. 14.

30. Respondents can discern no complaint in the paragraph numbered "30" in Petitioner's Brief. Pet. pp. 14-15.

31. Dr. Riley told Petitioner, "You are not to bring a dog to school without asking me first." Pet. pp. 15-16.

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1. Anita Hill, a white teacher, turned in an additional early pass voluntarily without being instructed to do so by Dr. Riley. Pet. p. 14. Petitioner contends that this infers that race was a factor in Dr. Riley's decision-making process. To the contrary, this shows that Ms. Hill followed the rules and Petitioner did not until instructed to do so by Dr. Riley.

2. Petitioner has no evidence of this assertion as Ms. Deloach denied this allegation in her deposition. Pet. p. 14. Petitioner repeatedly asserts that Respondents and/or Respondents' attorneys coached witnesses. She has no evidence of such and is violating Rule 24(6) of the United States Supreme Court Rules and basic rules of attorney conduct in making such unsupported allegations.

32. Respondents can discern no complaint in the paragraph numbered "32" in Petitioner's Brief. Pet. pp. 16-17.

33. Respondents can discern no complaint in the paragraph numbered "33" in Petitioner's Brief. Pet. p. 17.

34. Neither Ms. Cobb nor Dr. Riley spoke to Petitioner between February 7-9, 2001. Pet. p. 17.

35. Ms. Wilson, a white teacher, brought two puppies to school for share day.[3] Pet. pp. 17-18.

36. Ms. Herrington, Petitioner's white paraprofessional, complained to Dr. Riley about Petitioner. Pet. p. 18.

37. Dr. Batten told Petitioner's husband that he was unaware of Petitioner's problems with Dr. Riley. Pet. p. 18.

38. Respondents can discern no complaint about Respondents in the paragraph numbered "38" in Petitioner's Brief. Pet. p. 18.

39. Petitioner never observed Dr. Riley disrespect white teachers. Pet. p. 19.

40. Petitioner filed her grievance on September 25, 2001. Pet. p. 19.

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3. Ms. Wilson testified that she had permission from Dr. Riley, had a full-time student teacher in her classroom, and kept the puppies in her presence all day. (Doc 105 – Pg 25-27).

41. Respondents can discern no complaint in the paragraph numbered "41" in Petitioner's Brief. Pet. p. 19.

As noted by the District Court, "Tremble forgets that she, like every other employee, must absorb quite a few managerial thumps before making 'a federal case' out of any claimed adverse personnel actions. *Brown v. Sybase, Inc.*, 287 F. Supp. 2d 1330, 1334 (S.D. Fla. 2003)". Pet. App. p. 23. Petitioner simply and completely fails to point to any evidence of racial harassment or discrimination to support a claim of a racially hostile work environment.

B. Argument And Citation Of Authorities

To state a threshold claim for a racially hostile work environment, Petitioner must show three things. First, Petitioner must show that her "workplace is permeated with intimidation, ridicule and insult, that is sufficiently severe or pervasive to alter the conditions of [her] employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S. Ct. 367; 126 L. Ed. 2d 295 (1993). Second, Petitioner must show that the hostile conduct was aimed at her. Third, Petitioner must show that she was the target of this conduct ***because of her race***. *Jones v. Barnhart*, 349 F.3d 1260, 1268 (10th Cir. 2003); *Sullivan v. Newburgh Enlarged Sch. Dist.*, 281 F. Supp. 2d 689, 703-704 (S.D.N.Y. 2003). (*Emphasis added*) As the District Court pointed out, the burden of proof is somewhat demanding because it is too easy to mischaracterize as racism a supervisor's stern criticisms or abrasively imperious manner. *Howard v. Bd. of Educ.*, 70 Fed. Appx. 272, 281 (6th Cir. 2003). Pet. App. p. 16.

As shown in the statement of facts above, Petitioner has no proof of a work environment permeated with racial hostility. First, she fails to show any evidence of racial hostility. Petitioner is unable to even point to one incident of racial animus despite a 19-page factual statement including 41 alleged incidents of alleged maltreatment. Petitioner's argument that the District Court did not correctly apply *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002), is not clear. What is clear is that *Morgan* merely holds that a hostile work environment claim should be reviewed in its entirety even if some of the events alleged fall outside the statute of limitations, so long as one of the events comprising it fell within the statute of limitations. *Shields v. Fort James Corp.*, 305 F.3d 1280, 1281-1282 (11th Cir. 2002). Respondents have not raised a statute of limitations bar on any of Petitioner's claims. Furthermore, there is no indication that the District Court or the Eleventh Circuit failed to consider all of her allegations.

Viewed in its entirety, Petitioner's hostile work environment claim fails. To support a hostile environment claim, an employee can demonstrate either a single incident of extraordinarily severe discrimination or a series of incidents sufficiently continuous and concerted to alter the conditions of the work environment; but the employee's evidence must objectively demonstrate a hostile environment. *Sullivan*, *supra*. An employee's subjective belief is insufficient; the proper question is whether a reasonable person could find that her evidence demonstrates a hostile environment. Here, Petitioner repeatedly contends that Dr. Riley "harassed" her, yet she fails to point to any racial animus or racial component of the alleged harassment. Petitioner's complaints amount to nothing more than

dissatisfaction with Dr. Riley's managerial style, not racial harassment. Petitioner has failed to show even isolated incidents of discrimination, much less an environment "permeated with *discriminatory* intimidation, ridicule and insult." *Id.* (*Emphasis added*).

None of Petitioner's allegations individually or as a whole amount to grievously offensive conduct. The only thing Petitioner has shown is that she felt she worked in a generalized atmosphere of unpleasantness. This is simply not enough to objectively illustrate a racially hostile work environment. Thus, Petitioner's claim fails and her petition should be dismissed.

II. The Eleventh Circuit Court's opinion is not contrary to *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

A. Statement of Facts

Petitioner claims that Respondents violated her Fourteenth Amendment rights by failing to consider her grievance. Pursuant to Section 5 of Board Policy GAE, a "complaint shall be presented in writing . . . ***within ten (10) calendar days after the most recent incident upon which the complaint is based***." Resp. App. p. 5a. (*Emphasis added*). Unbelievably, Petitioner filed in this court an altered copy of Board Policy GAE that omits the 10-day deadline within which petitioner should have filed her grievance to avail herself of the procedure available to her. Pet. App. pp. 31-32. The incomplete copy in Petitioner's Appendix is not a mirror image of the Exhibit tendered in the District Court to which Petitioner cites as her source. A true, correct and complete copy of Board Policy GAE, as admitted in the

District Court as R-6-111-Ex 51, is attached as Respondents' Appendix.

Petitioner admits that the School District did not receive a written complaint from her until September 25, 2001 (Pet. p. 19, par. 40), over ***six months*** after the last "incident" alleged by Petitioner occurred in February, 2001 (Pet. pp. 14-18, paras. 30-38).

Petitioner's failure to follow the procedure clearly outlined in the Board Policy is an error of her own making, not a deprivation of her rights by others.

B. Argument And Citation Of Authorities

"To state a section 1983 claim, the petitioner must allege that a person, while acting under color of state law, deprived him of a federal or constitutional right." *Merritt v. Brantley*, 936 F. Supp. 988, 991 (S.D. Ga. 1996), *citing Edwards v. Wallace Community College*, 49 F.3d 1517, 1522 (11th Cir. 1995).

Petitioner alleges that the Eleventh Circuit erred in "not applying" *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, the United States Supreme Court held that the plaintiff did not have a property interest sufficient to require University authorities to give him a hearing when they declined to renew his contract of employment. *Id.* at 578. Thus, the Court held that there could be no Fourteenth Amendment protection. *Id.* at 579. Since the *Roth* Court held that there was no protectible property interest at stake, it did not have to reach whether or not there was a due process violation under the Fourteenth Amendment. *Id.* at 578. Respondents have never argued, and the lower courts have

not found, that Petitioner does not have a protectible property interest. Thus, *Roth*, *supra*, is not applicable to this case.

Petitioner had adequate administrative and State remedies, of which she failed to timely avail herself. *See Merritt v. Brantley*, 936 F. Supp. 988, 991 (S.D. Ga. 1996); *McKinney v. Pate*, 20 F.3d 1550, 1564-65 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110 (1995). As correctly held by the District Court, Petitioner's procedural due process claim under section 1983 fails "because she failed to show that State actors thwarted both her administrative and State-court remedies." *Merritt v. Brantley*, 936 F. Supp. at 991. A violation of a procedural due process right is not shown "unless and until the State fails to provide due process." *Id.* at 991, *quoting Zinermon v. Burch*, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).

In *McKinney v. Pate*, 20 F.3d 1550, 1564-65 (11th Cir. 1994), *cert. denied*, 513 U.S. 1110, 115 S. Ct. 898, 130 L. Ed. 2d 783 (1995), the Court held that, even if a county building inspector holding a protectible interest was fired without a proper hearing, he at most raised a procedural due process violation which ultimately failed because of the availability of adequate state remedies that he failed to exploit. "McKinney [thus] failed to take advantage of any state remedies, opting instead to pursue his claim in federal court." *Id.* at 1563. *See also Horton v. Bd. of Co. Comm'rs*, 202 F. 3d 1297 (11th Cir. 2000) ("*McKinney* is based on a recognition that the process a state provides is not only that employed by the board, agency, or other governmental entity whose action is in question, but also includes the remedial process state courts would provide if asked.")

Even assuming that Petitioner held a property interest in continued employment as a Sallie Z elementary school teacher, her own allegations show an adequate administrative remedy. Petitioner does not deny the existence of Bulloch County School District Policy GAE, enacted in accordance with O.C.G.A. § 20-2-989.5. Given the existence of an adequate remedy, Petitioner must show that state actors thwarted this administrative remedy and other State-court remedies. *Zinermon, supra.* Petitioner has failed to present any evidence of this essential element; thus, her due process claim fails.

For the foregoing reasons, Petitioner has failed to show that the Eleventh Circuit erred in holding that Petitioner did not have a Fourteenth Amendment Procedural Due Process Claim.

III. The Eleventh Circuit appropriately issued frivolous appeal sanctions against Petitioner.

In fact, Petitioner has failed to show that her appeal of this issue to the Eleventh Circuit was not frivolous. An adequate administrative remedy existed in the form of a grievance procedure pursuant to Board Policy GAE. Resp. App. p. 5a. Petitioner failed to timely avail herself of this process. Pet. p. 19. Thus, Petitioner cannot state a claim for a Fourteenth Amendment due process violation. A circuit court may award sanctions under Rule 38 of the Federal Rules of Appellate Procedure even if the district court did not find that sanctions were warranted under Rule 11 of the Federal Rules of Civil Procedure. *Freeze v. Griffith*, 849 F.2d 172, 176 (5th Cir. 1998). Here, the Petitioner was warned by the District Court how perilously close she came to a Rule 11 violation. Pet. App. pp. 27-28. She ignored that warning and was properly sanctioned by the Eleventh Circuit.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be DENIED.

Respectfully submitted,

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APPENDIX

APPENDIX — BOARD POLICY, COMPLAINTS AND GRIEVANCES OF THE BULLOCH COUNTY BOARD OF EDUCATION DATED FEBRUARY 16, 1998

BOARD POLICY **Descriptive Code: GAE**

COMPLAINTS AND GRIEVANCES **Date: 2/16/98**

SECTION 1. PURPOSE; INFORMAL RESOLUTION PREFERRED. It is the purpose of this policy to implement the provisions of the Act of the General Assembly of 1992, O.C.G.A. 20-2-989.5 et seq. In accordance with the foregoing, it is the policy of the Board of Education that certified personnel shall have the right to present and resolve complaints relating to certain matters affecting the employment relationship at the lowest organizational level possible. The Board of Education encourages all employees to resolve their complaints informally in a spirit of collegiality where possible. This policy and procedure is available where such efforts do not succeed, or where, for any other reason, the certificated employee desires to pursue this procedure.

SECTION 2. DEFINITIONS.

a. "Level One Administrator" means the principal of a school with respect to teachers and other certificated personnel assigned to that school. With respect to the certified Administrators supervised by the Superintendent, the "Level One Administrator" shall be the Superintendent. In any case not covered by this paragraph, the "Level One Administrator" shall be the supervisory certificated person designated by the Board or in the absence thereof, by the Superintendent.

b. "Central office administrator" means the local school system Superintendent.

c. "Complaint" means any claim or grievance by a certificated employee of this school district which is filed pursuant to this policy and which comes within the scope of the policy.

d. "Notification" means delivery in person to the party entitled to notification, or deposit in the United States Mail, certified mail, return receipt requested, to the last known address of the party notified.

SECTION 3. SCOPE OF COMPLAINT; EXCLUSIONS.

a. *Scope*. Unless excluded by paragraph (b) hereof, this complaint and grievance procedure is applicable to any claim by any professional employee certificated by the Professional Standards Commission who is affected in his or her employment relationship by an alleged violation, misinterpretation, or misapplication of statutes, policies, rules, regulations, or written agreements of this school district or with which the district is required to comply.

b. *Exclusions*. Thus procedure shall not apply to:

(1) Performance ratings contained in personnel evaluation and professional development plans pursuant to Code Section 20-2-210;

(2) Job performance;

(3) Termination, non-renewal, demotion, suspension, or reprimand of any employee, as set forth in Code Section 20-2-940;

(4) The revocation, suspension, or denial of certificates of any employee, as set forth in Code Section 20-2-790;

c. A certified employee who chooses to appeal under Code Section 20-2-1160, shall be barred from pursuing the same complaint under this policy.

SECTION 4. HEARING RIGHTS; EVIDENCE; REPRESENTATION; DECISIONS; RECORDS.

a. *Hearing; Evidence.* The complaint shall be entitled to an opportunity to be heard, to present relevant evidence, and to examine witnesses at each level, but the complainant may not present additional evidence at the Second or Third Hearing levels unless notice of the Complainant's intention and the evidence to be presented are submitted in writing five (5) days prior to the hearing to the Administrator who will preside at such level, and in the case of the local board, to the Superintendent. When hearing an appeal from a prior level, the local Board of Education shall hear and decide all appeals de novo.

b. *Representation.* The Complainant and the administrator against whom the complaint is filed or whose decision is appealed shall be entitled to the presence of an individual, including an attorney to assist in the

presentation of the complaint and the response thereto, at the Central Office Administrator and at the local Board of Education level. The presence of any individual other than the Complainant and the Administrator at Level One is prohibited, except witnesses who present testimony or documents.

c. *Hearing Officer.* The local Board of Education may appoint a member of the state Bar to serve as law officer who shall rule on all issues of law and other objections, but such attorney shall not assist in the presentation of the case for either party.

d. *Overall Hearing Time Schedule.* The overall time frame from the initiation of the complaint until rendition of the decision by the local board and notification thereof to the Complainant shall not exceed sixty (60) days.

e. *Automatic Referral To Next Level.* Any complaint not processed by the administrator or the local unit of administration within the time frame required by this policy shall be forwarded to the next level for determination.

f. *Records.* Accurate records of the proceedings at each level shall be kept; the proceedings shall be recorded by mechanical means; all evidence shall be preserved and made available to the parties at all times; and all costs and fees shall be borne by the party incurring them unless otherwise agreed upon by the parties; except that the cost of preparing and preserving the record of the proceedings shall be borne by the local Board of Education; provided however, the cost of transcribing the transcript of

evidence and proceedings before the local Board shall be paid by the party requesting same, and all costs of the record on appeal to the superior courts and appellate courts shall be paid by the party required to do so by the laws relating thereto.

g. *Decisions.* Each decision shall be made in writing and dated, and shall contain findings of fact and reasons for the particular decision reached.

h. *Notice.* The decision at each level shall be delivered to the Complainant by a person designated by the Superintendent, either (1) being hand delivered or (2) being deposited in the U. S. Mail (certified mail, return receipt requested). Notice to the Complainant shall be deemed to have been made on the date of hand delivery or on the date of deposit in the U.S. Mail by certified mail, return receipt requested to the address stated in the complaint or, if not contained in the complaint, to the last known address of the Complainant on file with the Board of Education.

SECTION 5. FIRST LEVEL; PRESENTATION; TIME; CONTENTS. The complaint shall be presented in writing to the Level One Administrator within ten (10) calendar days after the most recent incident upon which the complaint is based. The complaint shall include the following:

a. The mailing address of the Complainant to which all notices and other documents may be mailed;

b. The intent of the Complainant to utilize this complaint procedure, clearly stated;

c. A reference or description of the statute, policy, rule, contract provision or regulation that is alleged to have been violated, misinterpreted or misapplied;

d. A brief statement of the facts reasonably calculated to show how such statute, policy, rule or regulation was violated or misapplied, and how it substantially affects the employment relationship of the Complainant; and

e. A statement of the relief desired.

The Superintendent shall prepare forms for use in accordance with the foregoing requirements.

SECTION 6. FIRST LEVEL HEARING AND DECISION. The Level One Administrator shall record the date of filing on the complaint, and shall give notice to the Complainant of the time and place of the hearing, either by mail or hand delivery. When notice is given by mail, it shall be sent by first class mail to the address set forth in the complaint. If no address was included in the complaint, then the notice shall be sent to the last known address of the Complainant on file with the Board of Education. The Level One Administrator shall conduct a hearing on the complaint and render a decision thereon within ten (10) days of the filing of the complaint. The decision shall be dated and a copy shall be sent to the complainant as provided in Section 4 above.

Appendix

SECTION 7. SECOND LEVEL; APPEAL FROM FIRST LEVEL TO CENTRAL OFFICE ADMINISTRATOR. A Complainant dissatisfied with the decision of the first level shall be entitled to appeal to the Central Office Administrator by filing written notice of appeal with the Office of the Superintendent. The appeal must be filed within ten (10) calendar days after the Complainant is notified of the Level One decision. The Central Office Administrator shall record the date of the filing on the appeal and shall notify the Complainant in writing of the time and place of the hearing by mail or hand delivery. The Central Office Administrator shall obtain copies of all minutes, transcripts, documents and other records relating to the complaint and shall conduct a hearing and render decision within ten (10) calendar days of the date of the filing of the appeal, or the hearing may be conducted by any designated representative of the Central Office Administrator who shall promptly submit his or her recommendations and findings to the Central Office Administrator. for final decision. The decision shall be rendered and served on the Complainant and his attorney in accordance with Section 4(h).

SECTION 8. THIRD LEVEL; APPEAL TO BOARD OF EDUCATION. A Complainant or Level One Administrator dissatisfied with the decision of the Central Office Administrator may appeal to the Board of Education by filing written notice of appeal with the Office of the Superintendent. The appeal must be filed within ten (10) calendar days after the date of the decision as provided in Section 4. The Superintendent shall record the date of filing on the appeal, and shall promptly give written notice, by mail or by hand delivery, to the Complainant of the time and place of hearing.

Appendix

The Complainant and the Administrators against whom the complaint is filed or whose decision is being appealed shall be entitled to appear before the Board of Education and be heard. The Board of Education may direct that a pre-hearing conference be held prior to the hearing to identify issues and facilitate presentation. The local board shall conduct a hearing and render its decision in writing within twenty (20) calendar days after the hearing, and perfect service thereof on the Complainant and his attorney, all in accordance with Section 4.

SECTION 9. APPEALS TO STATE BOARD. Appeals from the decision of the local Board of Education shall be governed by the State Board Rule (BCAEA) governing appeals and O.C.G.A. 20-2-1160.

SECTION 10. REPRISALS PROHIBITED. No certificated personnel shall be subjected to reprisals as a result of filing any complaint under this policy. Any reprisals may be referred to the Professional Practices Commission.

SECTION 11. COLLECTIVE BARGAINING DISCLAIMER. Nothing in this policy shall be construed to permit or foster collective bargaining.

SECTION 12. REPEALS. All policies and parts of policies in conflict herewith are repealed.

STATE REF.: Georgia Board of Education Rule GAE (160-1-3-.01); BCAEA (160-1-3-.04)
State Standards B 1; G 8; G 11.1

Appendix

LEGAL REF.: *O.C.G.A.*, 20-2-210; 20-2-790 et seq.; 20-2-940 et seq.; 20-2-989, as amended, 1992; 20-2-989.5 et seq.; 20-2-1160; *Dalton City Board of Education v. Smith*, 256 Ga. 394 (1986)